

# STANDARD TERMS

1 January 2024

## 1 General

- 1.1 This document is a record of the standard terms of engagement applicable to your contractual relationship with Cluver Markotter Incorporated, Registration Number 2000/002905/21 (hereinafter "we"/"us"/"our firm").
- 1.2 These terms are additional to any contractual terms which may be agreed upon in writing in respect of any instructions governing the attorney-and-client relationship existing between you and our firm.
- 1.3 Unless otherwise agreed in writing, these terms apply to all matters dealt with by our firm on your behalf, irrespective of whether you have agreed to our prevailing terms with every new instruction.
- 1.4 Should any of the terms recorded herein be unclear or unacceptable to you, you are requested to notify the attorney dealing with your matter immediately. In the absence of any such notification, we shall assume that the terms and conditions as set out below are acceptable to you.
- 1.5 These terms, together with any written agreement [if any] as referred to in 1.2, constitute the whole agreement between you and our firm relating to the subject matter hereof and supersede any other discussions, understandings or agreements regarding the subject matter hereof. These terms will only be amended if reduced to writing and signed in writing by a director of the firm.
- 1.6 Our legal relationship is governed by South African law.

## 2 Consumers in terms of the Consumer Protection Act

- 2.1 If your business (our client) is a "consumer" in terms of section 5(2)(b) of the Consumer Protection Act 68 of 2008 ("CPA") (with an annual turnover or asset value below the prescribed amount that is set from time to time under that Act), you agree to notify us accordingly in writing without delay.
- 2.2 In the absence of such notification, we engage and render our services in good faith on the basis that your business (our client) is not a "consumer" for the purposes of section 5(2)(b) of the CPA.

## 3 Instructions and advice

- 3.1 In carrying out your work, we will rely on your full and timeous instructions.
- 3.2 You confirm that the persons instructing us are duly authorised to do so. If we are to accept instructions from only certain designated persons, you are to advise us thereof on reasonable prior notice in writing.
- 3.3 You should not assume we have knowledge of any other matters we have dealt with or are dealing with on your behalf or on behalf of a third party. In each case, it is your responsibility to provide us with full instructions, unless we agree otherwise in writing.
- 3.4 Our advice in a matter pertains to that matter only and should not be relied on for any other purpose not approved by us in writing.
- 3.5 You should only rely on the final versions of any advice or document we approve. For clarity, do not rely on draft versions of advice or documents.
- 3.6 Our advice is for your benefit, as our client, only. No other party may rely on it without our express agreement in writing.
- 3.7 We are not tax practitioners and we do not give tax advice. We recommend that you obtain advice from your preferred tax advisers prior to pursuing any course of action to avoid the risk of unintended tax consequences.

## 4 Financial and personal information/data: Consent

- 4.1 We are an accountable institution in terms of the Financial Intelligence Centre Act 38 of 2001 ("FICA") with duties which include the requirement to verify your identity in the prescribed manner, and to report certain suspicious or unusual transactions of which we become aware, without prior notice to you, irrespective of our professional duties of confidentiality or legal privilege. You hereby acknowledge our verification and reporting obligation.
- 4.2 Certain personal information/data will be required, obtained, stored, retained and processed by our firm for the purpose of dealing with instructions on your behalf. You hereby consent to our firm obtaining, storing, retaining and processing your personal information/data for this purpose, with the understanding that we

shall at all times comply with the provisions of all laws which regulate the protection of personal information/data, including the Protection of Personal Information Act 4 of 2013 ("POPIA") and all other laws relating to the protection, storage, handling, privacy, processing, retention and destruction of personal information/data.

- 4.3 You hereby authorise us to share your personal information/data with any Financial Institution, Bond Originator/s, Insurer, Home Owners Association, Transfer and Bond Cancellation Attorneys, Estate Agent and Agency as well as any other Related Party/Parties involved, as may be necessary in any matter for which we are instructed to act on your behalf.
- 4.4 To comply with our duties as an accountable institution to verify and report certain information in terms of the FICA, as stated in 4.1 above, we engage the services of an outside service provider, DocFox Africa (Pty) Ltd ("DFA"). The services rendered by DFA to our firm include document collection and analysis relating to both natural persons and juristic entities, watchlist screening, risk-rating and bank account verification.
- 4.5 To perform these services effectively, DFA shall store personal information/data of our firm and our clients electronically with a third party based in a foreign country ("third party") via Amazon Web Services, located in the Republic of Ireland, and/or to or via another third party offering the same DFA-required services in a foreign country. DFA shall ensure that the third party receiving the personal information/data is (a) subject to laws, binding corporate rules or a binding agreement that provide an adequate level of protection and effectively uphold principles substantially similar to the principles under the POPIA for reasonable processing of the personal information/data of a natural person and/or juristic person, and (b) is subject to provisions for the further transfer of information/data to a third party in a foreign country substantially similar to the provisions under section 72 of the POPIA.
- 4.6 You consent to these terms relating to the storage, retention, handling, processing and further transfer to a third party in a foreign country of your personal information/data as required under section 72(1)(b) of the POPIA, with the understanding that this consent is required and will be acted upon us only for the purpose of dealing with matters on your behalf.
- 4.7 In addition to complying with the POPIA, we will also comply with requirements as specified from time to time by the Legal Practice Council ("LPC") of South Africa for the storing of personal information/data of clients.
- 4.8 We are bound by attorney-client privilege and will maintain the confidentiality of information pertaining to our clients.

## 5 Fees and disbursements

- 5.1 With the exception of certain tariff-bound legal work, the fees debited by our firm are based on the hourly rate(s) of the attorney(s) dealing with your matter.
- 5.2 The hourly rate(s) of the relevant attorney(s) can be requested by you from the attorney(s) concerned.
- 5.3 The hourly rates of our attorneys are adjusted annually on the 1st of January and the adjusted rates will apply to any on-going instructions as from that date.
- 5.4 Unless otherwise agreed with you, we will debit interim fees at regular intervals. Debiting of fees will accordingly not take place not only upon the completion of a particular matter.
- 5.5 All disbursements incurred on your behalf will be debited and invoiced to you as and when such disbursements are incurred by us.
- 5.6 Invoices for fees and disbursements are payable on presentation. Interest will be debited on all amounts not settled within 30 (thirty) days of date of invoice at a rate equal to the prime overdraft lending rate of our bankers from time-to-time. Should you fail to pay any amount due in terms of a statement of account rendered by our firm in accordance with these standard terms, we reserve the right to submit your personal information (as well as details of your default) to any registered Credit Bureau and any tracing service provider. You hereby consent to the disclosure of the aforementioned information and that such information be shared with customers of the Credit Bureau, registered credit providers and tracing service providers.
- 5.7 Note that successful litigation will as a rule not result in full recovery from the other party of the fees and disbursements paid or payable to our firm. Our fees and disbursements remain payable irrespective of the extent of recovery by you of such fees and disbursements from the other party.
- 5.8 In instances where you may have agreed with a contracting party that such party shall be responsible for payment of our fees and disbursements pertaining to a particular matter, you, as our instructing client, will nevertheless remain liable for our fees and disbursements. Any accommodation on our part to invoice such other contracting party for the fees and disbursements will not detract from your obligations to settle the relevant account with our firm in the event of non-payment by the other party.
- 5.9 Should you request a cost estimate at the commencement of a particular matter, and such estimate is given, it must be noted that such cost estimate should be regarded as an estimate only

and does not constitute a quote. We reserve the right to debit full fees and disbursements incurred in a particular matter irrespective of any lesser cost estimate given to you in relation to the matter.

- 5.10 Should you wish to limit your exposure to costs in any particular matter, you may instruct the attorney in charge in writing to notify you as soon as the fees and disbursements reach the limit imposed. At such point, on being so notified, you are to issue your attorney with further instructions.
- 5.11 It is our policy to ensure that our clients are fully informed at all times of all aspects pertaining to the finances of their matters. You are welcome to direct any queries in this regard (or relating thereto) to the attorney dealing with your matter.
- 5.12 Should you require any invoices issued by our firm to be submitted to the LPC for taxation, we reserve the right to recover from you any higher amount at which the relevant account may be taxed.

## **6 Bank account details; investment of funds and cash deposits**

- 6.1 We shall never inform you by email or electronic messaging service of a change of our banking details. A change of our banking details is, in any event, highly unlikely. If you should receive an email or other electronic message advising of a change of our banking details, please do not act on such message, and please contact our office immediately.
- 6.2 Cyber fraud is a constant and increasing threat. We strongly recommend that you make payments to us from the banking institutions where we are listed as a bank-approved beneficiary. If you cannot make payment from any of these banking institutions and inform us accordingly, we will provide our banking details to you by using a two-step authentication process. This process entails that we (a) send our banking details to you per email in a password protected document, and (b) we separately send the password for the protected document to your mobile number per WhatsApp. You undertake not to make any payment to us in any bank account not verified in accordance with the aforesaid procedures.
- 6.3 Unless you instruct us to invest trust funds on your behalf by executing an investment mandate, funds in our trust account will not accrue interest in accordance with the Legal Practice Council's rules.
- 6.4 Note that in terms of the Legal Practice Act 28 of 2014, a statutory deduction of 5% of the interest amount earned on funds invested on your behalf will be made. This amount will be deducted and paid over directly to the Legal

Practitioners Fidelity Fund by the financial institution with whom the investment is placed.

- 6.5 Should you make a cash deposit of R5,000.00 or more into our bank account, the cash handling fee levied by the financial institution shall be for your account.

## **7 Communications and data**

- 7.1 If your contact details change, please notify us in writing without delay.
- 7.2 Unless you instruct otherwise, we will communicate with you by any expedient form of electronic communication (including email, telephone, facsimile, video conference, instant messaging). You undertake to maintain effective security arrangements for the systems that you use for these forms of communication. You accept the inherent risks arising from the use of such methods (such as non-delivery, interception and forgery).
- 7.3 While we employ technologies to protect against malicious communication or data actions, you agree not to rely only on our protective measures and to employ your own technologies for this purpose.
- 7.4 We will only be deemed to have received any message from you when we respond to it.

## **8 Newsletters**

- 8.1 You hereby also consent to receiving Newsletters and/or other useful information from us in the future.

## **9 Records**

- 9.1 All documentation relating to matters dealt with by this firm will be stored in our archives for a period of 7 (seven) years.
- 9.2 At expiry of this 7 (seven) year period, the records will be destroyed.
- 9.3 Should we be requested to retrieve documentation relating to a finalised matter, we reserve the right to charge a reasonable fee for attendances in this regard.
- 9.4 Safe-custody facilities are available at our offices and may be used to deposit documents under a special safe-custody number. We charge a fee for the storage and handling of documents held in our safe-custody facility. Further information will be furnished upon request.

## 10 Complaints

- 10.1 Any complaints relating to a matter dealt with by our firm on your behalf must be lodged with the attorney at the head of that particular department.
- 10.2 Complaints will be assessed and you will receive a response from us as soon as reasonably possible.
- 10.3 It is the aim of our firm to deal with all matters to the satisfaction of our clients. We invite you to notify us of any instances where, in your opinion, we may have fallen short of this goal.

## 11 Termination of mandate

- 11.1 Unless specifically otherwise agreed, you are entitled to terminate our mandate to act on your behalf at any time.
- 11.2 If we become aware of an untenable conflict of interest which cannot be resolved to your and our satisfaction, we reserve the right to withdraw from your matter. You agree not to make any claims against us pursuant thereto.
- 11.3 In the event of termination of our mandate, you are entitled to delivery of all documentation relating to your matter on receipt of payment by us of all fees and disbursements due to us to date of termination.

## 12 Limitation of liability

- 12.1 The maximum liability of our firm and/or its directors for all claims arising out of the execution of your matter(s) shall be limited to an amount equal to twice the fees charged for our services rendered in respect of the particular mandate or, if applicable, twice the amount of the fees as quoted for the mandate. This maximum liability shall be an aggregate liability for all claims of whatsoever nature, from whatever source and howsoever arising, whether in contract, delict or otherwise.
- 12.2 Our firm and/or its directors shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by or misrepresentations, negligent or dishonest acts or omissions on your part or on the part of any of your employees or agents.
- 12.3 **No consequential damages.** We shall not be liable for any consequential damages, indirect, punitive or other special damages (including loss of profit) which you may suffer. You hereby waive in favour of our firm any such claims.
- 12.4 **No liability of related parties.** You agree not to make any claim against a current or past director, employee, consultant or other agent of our firm in

his/her personal capacity/ies and hereby waive any such claims.

- 12.5 **No liability if insurance does not provide cover.** Certain exclusions and limitations apply to our professional indemnity cover (for instance, limitations from causes arising from North America). We will provide you with a copy of such prevailing cover on request, should you wish to appraise yourself of such limitations. If no proceeds are recovered by us from our professional indemnity cover in response to a claim by you against our firm and/or any of its directors, then you hereby waive such claim in full.
- 12.6 **No liability for third-party actions or advice.** We may from time to time be required to engage third-parties, such as advocates and foreign trade mark correspondents to render services in relation to your instructions/matter. Should any claim arise as a result of the actions or omissions of such third-party/parties. We undertake on your request in writing to cede to you the right to claim from such third parties directly. Any such cession will be subject to you indemnifying us for any adverse consequences arising from such cession, including legal costs.
- 12.7 The exclusion of liability in the previous clauses shall not apply to the extent that any liability arises out of acts, omissions or misrepresentations which constitute criminal, dishonest or fraudulent conduct or actions on the part of our firm's directors, employees, or agents.
- 12.8 In determining the liability of our firm and/or its directors for purposes of any action or omission in contract, a court or arbitrator shall limit such liability by having regard to the contribution to the loss or damage in question of all the parties concerned, based upon relative degrees of fault; it being agreed that the provisions of Section 1 of the Apportionment of Damages Act, 1956 will apply to all claims between you and our firm, and that reference in this terms to "dishonest", "negligence", "damages" or "losses" shall fall within the meanings of "fault" and "damage" respectively as contained in Section 1 of the Apportionment of Damages Act, 1956.

## 13 Arbitration

- 13.1 Except for disputes over which the Legal Practice Council has jurisdiction or disputes concerning the payment of any fees or expenses, any dispute arising out of or pursuant to this Agreement shall be finally resolved by arbitration in Cape Town in accordance with the rules agreed upon between the parties in writing within 14 (fourteen) working days after the arbitration has been demanded, failing which in terms of the Expedited Rules of the Arbitration Foundation of Southern Africa (hereafter AFSA).

13.2 The proceedings shall be presided over by a single arbitrator agreed to between the parties to the dispute in writing, failing such agreement within 7 (seven) working days after the arbitration has been demanded, an arbitrator or arbitrators as appointed by AFSA having regard to the nature of the dispute. All proceedings shall take place in privacy and without any public participation or comment.

13.3 You consent to the jurisdiction of the Magistrate's Court to determine any dispute pertaining to the payment of any fees or expenses.

**14 Domicilium citandi et executandi**

14.1 You hereby appoint your physical address provided to us in the *New Client Form* as your chosen *domicilium citandi et executandi* for the service of all notices and process. Alternatively you appoint the following physical address as your chosen *domicilium citandi et executandi* for the service of all notices and process:

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Name of Client: \_\_\_\_\_

Signature of Client: \_\_\_\_\_

Name of authorised signatory (where applicable): \_\_\_\_\_

Designation of signatory: \_\_\_\_\_

Date of signature: \_\_\_\_\_

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